



## Senate

General Assembly

**File No. 604**

January Session, 2011

Substitute Senate Bill No. 951

*Senate, April 20, 2011*

The Committee on Judiciary reported through SEN. COLEMAN of the 2nd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT CONCERNING THE APPOINTMENT OF A GUARDIAN AD LITEM FOR A PERSON WHO IS SUBJECT TO A CONSERVATORSHIP PROCEEDING OR A PROCEEDING CONCERNING ADMINISTRATION OF TREATMENT FOR A PSYCHIATRIC DISABILITY.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 45a-132 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2011*):

3 (a) [In] (1) Except as provided in subdivisions (2) and (3) of this  
4 subsection, in any proceeding before a court of probate or the Superior  
5 Court including the Family Support Magistrate Division, whether  
6 acting upon an appeal from probate or otherwise, the judge or  
7 magistrate may appoint a guardian ad litem for any minor or  
8 incompetent, undetermined or unborn person, or may appoint one  
9 guardian ad litem for two or more of such minors or incompetent,  
10 undetermined or unborn persons, if it appears to the judge or  
11 magistrate that one or more persons as individuals, or as members of a  
12 designated class or otherwise, have or may have an interest in the

13 proceedings, and that one or more of them are minors, incompetent  
14 persons or persons undetermined or unborn at the time of the  
15 proceeding.

16 (2) No judge or magistrate may appoint a guardian ad litem for (A)  
17 a patient in a proceeding under section 17a-543 or 17a-543a, prior to a  
18 determination by a court of probate that the patient is incapable of  
19 giving informed consent under either of said sections, or (B) a  
20 respondent in a proceeding under sections 45a-644 to 45a-663,  
21 inclusive, prior to a determination by a court of probate that the  
22 respondent is incapable of caring for himself or herself or incapable of  
23 managing his or her affairs. No judge or magistrate may appoint a  
24 guardian ad litem for an applicant under section 45a-705a.

25 (3) No judge or magistrate may appoint a guardian ad litem for a  
26 conserved person in a proceeding under section 17a-543 or 17a-543a or  
27 sections 45a-644 to 45a-663, inclusive, unless (A) the judge or  
28 magistrate makes a specific finding of a need to appoint a guardian ad  
29 litem for a specific purpose or to answer specific questions to assist the  
30 judge or magistrate in making a determination, or (B) the conserved  
31 person's attorney is unable to ascertain the preferences of the person,  
32 including preferences previously expressed by the person. Prior to  
33 appointing a guardian ad litem for a person under subparagraph (B) of  
34 this subdivision, the judge or magistrate may question the person to  
35 determine the person's preferences or inability to express such  
36 preferences. If the judge or magistrate appoints a guardian ad litem  
37 under this subdivision, the judge's or magistrate's order shall (i) limit  
38 the appointment in scope and duration, and (ii) direct the guardian ad  
39 litem to take only the specific action required or to answer specific  
40 questions posed by the judge or magistrate, including questions  
41 designed to ascertain whether the attorney's or conservator's proposed  
42 course of action is the least restrictive means of intervention available  
43 to assist the person in managing his or her affairs or caring for himself  
44 or herself. Any appointment of a guardian ad litem under this  
45 subdivision shall terminate upon the guardian ad litem's report to the  
46 judge or magistrate in accordance with the order appointing the

47 guardian ad litem, or earlier upon the order of the judge or magistrate.

48 (4) For the purposes of this subsection, "conserved person",  
49 "incapable of caring for himself or herself", "incapable of managing his  
50 or her affairs", "least restrictive means of intervention" and  
51 "respondent" have the meanings set forth in section 45a-644 and  
52 "conservator" means a conservator of the person or conservator of the  
53 estate, as those terms are defined in section 45a-644.

54 (b) The appointment of a guardian ad litem shall not be mandatory,  
55 but shall be within the discretion of the judge or magistrate.

56 (c) Any order or decree passed or action taken in any such  
57 proceeding shall affect all the minors, incompetent persons or persons  
58 thereafter born or determined for whom the guardian ad litem has  
59 been appointed, in the same manner as if they had been of the age of  
60 majority and competent and present in court after legal notice at the  
61 time of the action or the issuance of the order or decree.

62 (d) Any appointment of a guardian ad litem may be made with or  
63 without notice and, if it appears to the judge or magistrate that it is for  
64 the best interests of a minor having a parent or guardian to have as  
65 guardian ad litem some person other than the parent or guardian, the  
66 judge or magistrate may appoint a disinterested person to be the  
67 guardian ad litem.

68 (e) [When] Except as provided in subdivisions (2) and (3) of  
69 subsection (a) of this section, when the appointment of a guardian ad  
70 litem is made in connection with the settlement of a decedent's estate  
71 or the settlement of the account of a trustee or other fiduciary, the  
72 person so appointed shall be authorized to represent the minor or  
73 incompetent, undetermined or unborn person in all proceedings for  
74 the settlement of the estate or account and subsequent accounts of the  
75 trustee or other fiduciary, or until [his] the person's appointment is  
76 terminated by death, resignation or removal.

77 (f) The guardian ad litem may be removed by the judge or

78 magistrate which appointed [him] the guardian ad litem, without  
79 notice, whenever it appears to the judge or magistrate to be in the best  
80 interests of the ward or wards of the guardian.

81 (g) Any guardian ad litem appointed under the provisions of this  
82 section may be allowed reasonable compensation by the judge or  
83 magistrate appointing [him] the guardian ad litem and shall be paid as  
84 a part of the expenses of administration.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2011	45a-132

**Statement of Legislative Commissioners:**

In section 1(a)(4), the reference to the definition of "conservator" was amended for accuracy.

**JUD**      *Joint Favorable Subst.-LCO*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

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**OFA Fiscal Note**

**State Impact:** None

**Municipal Impact:** None

**Explanation**

The bill clarifies the circumstances in which a judge can appoint a guardian at litem for a person who is subject to a conservatorship proceeding or a proceeding concerning administration of treatment for a psychiatric disability. This will not result in a fiscal impact to the Probate Court Administration Fund, as guardians at litem for these matters are compensated by the individual they are representing.

**The Out Years**

**State Impact:** None

**Municipal Impact:** None

**OLR Bill Analysis****SB 951*****AN ACT CONCERNING THE APPOINTMENT OF A GUARDIAN AD LITEM FOR A PERSON WHO IS SUBJECT TO A CONSERVATORSHIP PROCEEDING OR A PROCEEDING CONCERNING ADMINISTRATION OF TREATMENT FOR A PSYCHIATRIC DISABILITY.*****SUMMARY**

This bill limits the circumstances under which a probate or Superior Court judge or family support magistrate can appoint a guardian ad litem (GAL – an advocate for the best interests of mentally incompetent people, among others). It also limits the GAL's role when the incompetent person already has a conservator. Conservators also recommend decisions based on their ward's best interests.

The bill adopts the definition of key terms as they are used in probate statutes.

EFFECTIVE DATE: October 1, 2011

**LIMITED APPOINTMENT AUTHORITY**

Under the bill, in situations involving the involuntary administration of medical or surgical procedures or in which the person already has a conservator, the court cannot also appoint a GAL unless a probate judge determines that the conserved person is incapable of (1) caring for himself or herself or (2) managing his or her affairs. Judges are also prohibited from appointing GALs in habeas corpus proceedings, where the conserved person claims that he or she is being unlawfully treated or conserved. Current law does not expressly restrict a court's authority to appoint GALs.

**LIMITED PURPOSE AND DURATION OF APPOINTMENT**

The bill also requires the court to limit a GAL's role in proceedings

where the mentally ill person is being conserved. Rather than giving the court broad discretion to set the scope of the GAL's authority, the bill requires the court to make a specific finding that a GAL is needed (1) for a specific purpose or to answer specific questions to help the court in making a determination or (2) because the conserved person's attorney is unable to ascertain his or her client's preferences, including preferences he or she previously expressed. Before making an appointment, the court may question the conserved person to determine his or her preferences or inability to express those preferences.

The appointing judge or magistrate's GAL appointment order must

1. limit the GAL's appointment scope and duration and
2. direct the GAL to take only the specific action required or to answer specific questions the court poses.

The questions posed may include those to ascertain whether the attorney's or conservator's person's proposed course of action is the least restrictive means of intervention available to the person in managing his or her affairs or caring for himself or herself.

Any GAL appointment must end when the GAL submits his or her court report. As under existing law, the court may order it to end sooner.

## **COMMITTEE ACTION**

Judiciary Committee

Joint Favorable

Yea 41      Nay 0      (04/05/2011)